

1 Michael R. Lozeau (State Bar No. 142893)

2 Rebecca L. Davis (State Bar No. 271662)

3 E-mail: michael@lozeaudrury.com

4 rebecca@lozeaudrury.com

5 LOZEAU DRURY LLP

6 1939 Harrison St., Suite 150

7 Oakland, CA 94612

8 Tel: (510) 836-4200

9 Fax: (510) 836-4205

10 Attorneys for Plaintiff

11 THE CALIFORNIA SPORTFISHING

12 PROTECTION ALLIANCE

13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 THE CALIFORNIA SPORTFISHING
16 PROTECTION ALLIANCE, a
17 California nonprofit corporation,

18 Plaintiff,

19 vs.

20 Tri C Manufacturing, Inc., a California
21 corporation,

22 Defendant.

Case No. 2:20-cv-00037-TLN-EFB

CONSENT DECREE

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

CONSENT DECREE

The following Consent Decree is entered into by and between Plaintiff The California Sportfishing Protection Alliance (“Plaintiff” or “CSPA”) and Defendant Tri C Manufacturing, Inc. (“Defendant” or “Tri-C”). The entities entering into this Consent Decree are each an individual “Settling Party” and collectively the “Settling Parties” or “Parties.”

WHEREAS, CSPA is a 501(c)(3) non-profit, public benefit corporation duly organized and existing under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the Sacramento River, its tributaries, and other California waters;

WHEREAS, Tri-C is the owner and operator of a facility located at 520 Harbor Boulevard in West Sacramento, California that recycles used tires and manufactures equipment to shred and sort tires, among other activities (the “Facility”);

WHEREAS, the Facility falls within Standard Industrial Classification (“SIC”) codes 5093 (Scrap and Waste Materials) and 3559 (special industrial machinery, NEC);

WHEREAS, storm water discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ and as subsequently amended by Water Quality Order No. 2014-0057-DWQ) (hereinafter the “Permit”), issued pursuant to Section 402 of the Federal Water Pollution Control Act (“Clean Water Act” or “the Act”), 33 U.S.C. §§ 1251 *et seq.*;

WHEREAS, the Permit includes the following requirements for all permittees, including Tri-C: 1) develop and implement a storm water pollution prevention plan

1 (“SWPPP”); 2) control pollutant discharges using best available technology
2 economically achievable (“BAT”) and best conventional pollutant control technology
3 (“BCT”) to prevent or reduce pollutants; 3) implement BAT and BCT through the
4 development and application of Best Management Practices (“BMPs”), which must be
5 included and updated in the SWPPP; and 4) when necessary, implement additional
6 BMPs to prevent or reduce any pollutants that are causing or contributing to any
7 exceedance of water quality standards;

8 **WHEREAS**, on October 8, 2019 CSPA served Tri-C, the Administrator of the
9 United States Environmental Protection Agency (“EPA”), the Executive Director of
10 the State Water Resources Control Board (“State Board”), the Executive Officer of
11 Regional Water Quality Control Board, Central Valley (“Regional Board”), the U.S.
12 Attorney General, and the Regional Administrator of the EPA (Region 9) with a
13 notice of intent to file suit under Sections 505(a)(1) and (f) of the Clean Water Act, 33
14 U.S.C. § 1365(b)(1)(A) (“60-Day Notice Letter”), alleging violations of the Act and
15 the Permit at the Facility;

16 **WHEREAS**, on January 6, 2020, CSPA filed a complaint against Tri-C in the
17 United States District Court, Central District Court of California, entitled *California*
18 *Sportfishing Protection Alliance v. Tri C Manufacturing, Inc.* (Case No. 2:20-cv-
19 00037-TLN-EFB); alleging violations of Section 301(a) of the Clean Water Act, 33
20 U.S.C. § 1311(a), and violations of the Permit at the Facility (“Complaint”) based on
21 the 60-Day Notice Letter;

22 **WHEREAS**, CSPA contends in its 60-Day Notice Letter and Complaint that,
23 among other things, Tri-C has repeatedly discharged polluted storm water in violation
24 of the Permit and the Clean Water Act;

25 **WHEREAS**, Tri-C denies all allegations set forth in the 60-Day Notice Letter
26
27

1 and Complaint relating to the Facility;

2 **WHEREAS**, the Settling Parties, through their authorized representatives and
3 without either adjudication of CSPA's claims or any admission by Tri-C of any
4 alleged violation or other wrongdoing, believe it is in their mutual interest to resolve
5 in full CSPA's allegations in the 60-Day Notice Letter and Complaint through
6 settlement and avoid the cost and uncertainties of further litigation;

7 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
8 **SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT,**
9 **AS FOLLOWS:**

10 1. The Court has jurisdiction over the subject matter of this action pursuant
11 to Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);

12 2. Venue is appropriate in the Eastern District of California pursuant to
13 Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facility
14 at which the alleged violations took place is located within this District;

15 3. The Complaint states claims upon which relief may be granted pursuant
16 to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

17 4. Plaintiff has standing to bring this action;

18 5. The Court shall retain jurisdiction over this matter for purposes of
19 enforcing the terms of this Consent Decree for the life of the Consent Decree, or as
20 long thereafter as is necessary for the Court to resolve any motion to enforce this
21 Consent Decree.

22 **I. OBJECTIVES**

23 6. It is the express purpose of the Settling Parties entering into this Consent
24 Decree to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251,
25 *et seq.*, and to resolve those issues alleged by CSPA in its Complaint. In light of these
26

objectives and as set forth fully below, Defendant agrees to comply with the provisions of this Consent Decree and to comply with the requirements of the Permit and all applicable provisions of the Clean Water Act at the Facility.

II. COMMITMENTS OF TRI-C

7. In order to reduce or prevent pollutants associated with industrial activity from discharging via storm water to the waters of the United States, Tri-C shall implement appropriate structural and non-structural BMPs, as required by the Permit, as described more fully below.

8. **Maintenance of Implemented Storm Water Controls.** Tri-C agrees that the Facility shall maintain in good working order all storm water collection and management systems currently installed or to be installed pursuant to this Consent Decree, including but not limited to, existing housekeeping measures.

9. **Structural Improvements to Storm Water Management Measures.** Unless otherwise indicated in paragraph 25, Tri-C shall implement the below structural best management practices to improve storm water management at the Facility. Given the business and other uncertainties related to the current COVID-19 crisis and the potential sale and assignment of the business, Tri-C shall use its best efforts to implement the following structural BMPs by October 1, 2020, but, shall in any event implement each of the following BMPs at the Facility by no later than January 1, 2021:

a. **Storm Water Treatment System.** Tri-C shall install and maintain Phase 1 of the treatment system ("Phase 1 Treatment System") described in the Frog Environmental/Storm Proof "Storm Water Treatment System Description and Sizing Tri-C Manufacturing" dated July 15, 2020 (the "Proposal"), attached hereto as Exhibit A. Installation of the Phase 1 Treatment System shall include

1 Facility site upgrades to redirect storm water flow from discharge points DP#1, DP#2,
2 and DP#3 to a single discharge location where the Phase 1 Treatment System will be
3 located. The Phase 1 Treatment System shall be designed to store, and prevent
4 bypass, during peak discharges for storms at least double the 85th percentile hourly
5 intensity, and to treat an 85th percentile 24-hour storm volume for drainage areas 1, 2,
6 and 3, as identified on the Facility's SWPPP map, attached hereto as Exhibit B. The
7 Phase 1 Treatment System will be designed to handle and treat without bypass, at a
8 minimum, the maximum flow rate of runoff produced by the 85th percentile hourly
9 rainfall intensity, as determined from local historical rainfall records, and store double
10 the discharge from an 85th percentile storm, in accordance with the General Permit.
11 When combined with the Phase 1 Treatment System's drop inlets, pumps, clarifiers,
12 and other elements of the Phase 1 Treatment System, the capacity based on this rate is
13 50 gallons per minute ("gpm") for Drainage Areas DP#1, DP#2 and DP#3. The
14 Treatment System shall be designed to achieve reduction of pollutant levels below
15 NALs.

16 b. Prior to installation, the design of the Treatment System must be
17 approved by a qualified Professional Engineer.

18 c. Tri-C shall notify CSPA of any bypass of the treatment system that
19 occurs from runoff during or following a rain event.

20 d. Within ten (10) days of the installation of the Phase 1 Treatment
21 System, Tri-C shall provide CSPA with a written report certifying that it has
22 completed installation and containing digital photographs of the installed measures.

23 **10. Exposure Minimization BMPs.** By September 1, 2020, Tri-C shall
24 implement the following exposure minimization BMPs at the Facility:

25 a. To prevent rainfall from coming into contact with ground rubber
26
27

1 and metal debris stored in the bunkers on the western edge of the 520 Harbor Parcel,
2 as depicted in Exhibit B, Tri-C shall install the necessary infrastructure to facilitate a
3 temporary covering over the bunkers that will be mobilized for all ongoing storm
4 events.

5 b. To prevent rainfall from coming into contact with dust and
6 particulate generated from the Facility's outdoor classifier unit, Tri-C shall install
7 covers over the classifier section of the processing line located on the south side of the
8 Indoor Production building, as depicted in Exhibit B.

9 **11. Improvements to Housekeeping Measures at the Facility.** By
10 September 1, 2020, Tri-C shall implement the following housekeeping procedures at
11 the Facility:

- 12 a. Tri-C shall conduct daily sweeping of all paved areas of the Facility
13 using a regenerative sweeper. Tri-C shall also conduct sweeping at
14 the bunkers, depicted in Exhibit B, any time rubber crumb is loaded or
15 unloaded from the bunkers. All sweeping activities shall be recorded
16 in a sweeping log.
17 b. Tri-C shall repair all cracked pavement areas of the Facility that
18 inhibit storm water flowing to discharge points DP#1, DP#2, or DP#3.
19

20 **12. Additional Monitoring and Sampling.** Tri-C shall conduct the
21 following enhanced monitoring and sampling procedures.

- 22 a. **Storm Water Analysis.** Tri-C shall analyze each storm water sample
23 taken in accordance with the General Permit and this Consent Decree
24 for, at a minimum, pH, total suspended solids, oil and grease, iron,
25 aluminum, and Zinc.
26 b. During the 2020-2021 reporting year, Tri-C shall sample and analyze
27

1 storm water discharges from, at a minimum, the first four Qualifying
2 Storm Events (“QSEs,” as defined in the General Permit), in the
3 manner set forth in the General Permit. If the Facility’s storm water
4 sampling results from the first two QSEs during the 2020-2021
5 reporting year indicate that the average of the analytical results for
6 aluminum, iron, zinc, TSS, or pH exceed the annual NALs (as set
7 forth in the General Permit and listed below in Table 1) (a “Non-
8 Complying Result”), Tri-C shall upgrade the Phase 1 Treatment
9 System by installing and maintaining the carbon media upgrade
10 described in Exhibit A as Phase 2 (the “Phase 2 Treatment System”)
11 by no later than 60-days after receipt of the Non-Complying Result. If
12 the first two QSEs during the 2020-2021 reporting year do not
13 demonstrate an exceedance, but the sampling results from all four
14 QSEs during the 2020-2021 reporting year indicate that the average of
15 the analytical results for aluminum, iron, zinc, TSS, or pH exceed the
16 annual NALs, then Tri- shall upgrade the Phase 1 Treatment System
17 by installing and maintaining a Phase 2 Treatment System by
18 September 1, 2021.

- 19
- 20 c. If Tri-C is required to install the Phase 2 Treatment System pursuant
- 21 to paragraph 12(b), Tri-C shall sample and analyze, at a minimum, the
- 22 first four QSEs during the 2021-2022 reporting year, in the manner set
- 23 forth in the General Permit. If the Facility’s storm water sampling
- 24 results from the first two QSEs during the 2021-2022 reporting year
- 25 indicate that the average of the analytical results for aluminum, iron,
- 26 zinc, TSS, or pH exceed the annual NALs (as set forth in the General
- 27

Permit and listed below in Table 1), Tri-C shall upgrade the Phase 2 Treatment System by installing and maintaining the metals media upgrade described in Exhibit A as Phase 3 (the “Phase 3 Treatment System”) by no later than 60-days after receipt of the Non-Complying Result. If the first two QSEs during the 2021-2022 reporting year do not demonstrate an exceedance, but the sampling results from all four QSEs during the 2021-2022 reporting year indicate that the average of the analytical results for aluminum, iron, zinc, TSS, or pH exceed the annual NALs, then Tri- shall upgrade the Phase 2 Treatment System by installing and maintaining a Phase 3 Treatment System by September 1, 2022.

- d. For purposes of this Consent Decree only, if a QSE occurs at the Facility and Tri-C fails to take a sample of that QSE or fails to have a sample from that QSE analyzed, the Parties stipulate that Tri-C shall make a payment of \$2,500.00 to the Rose Foundation for Communities and the Environment pursuant to the terms described in paragraph 15, below.
- e. **Monitoring Results.** Results from the Facility’s sampling and analysis during the term of this Consent Decree shall be provided to CSPA within thirty (30) days of receipt of the sampling results by Tri-C or its counsel.

Table 1. Numeric Limitations.

Contaminant	Numeric Limit
Aluminum	0.75 mg/L

1	Iron	1.0 mg/L
2		
3	Zinc	0.26 mg/L
4		
5	Total Suspended Solids	100 mg/L
6	pH	6.0 – 9.0 s.u.

7 **13. Amendment of SWPPP.** Within thirty (30) days of the Effective Date,
8 Tri-C shall amend the Facility’s SWPPP to the extent necessary to incorporate all
9 changes, improvements, and best management practices set forth in or resulting from
10 this Consent Decree. Tri shall ensure that all maps, tables, and text comply with the
11 requirements of the Permit. Specifically, the map shall depict each of the Facility’s
12 drainage areas. A copy of the amended SWPPP shall be provided to CSPA within
13 ten (10) business days of completion.

14 **14. Provision of Documents and Reports.** During the term of this Consent
15 Decree, Tri-C shall provide CSPA with a copy of all documents submitted to the
16 Regional Board or the State Board concerning the Facility’s storm water discharges,
17 including but not limited to all documents and reports submitted to the Regional
18 Board and/or State Board as required by the Permit. Such documents and reports
19 shall be mailed to CSPA contemporaneously with submission to such agency.
20 Alternatively, to the extent that Tri-C submits such documents to the Regional Board
21 or State Board via the State Board’s Stormwater Multiple Application and Report
22 Tracking System (“SMARTS”), Tri-C may satisfy this requirement by providing
23 notice to CSPA via e-mail that said results have been uploaded to SMARTS within
24 seven (7) days of uploading said documents.
25

1
2 **III. MITIGATION PAYMENT, REIMBURSEMENT OF LITIGATION**
3 **FEES AND COSTS, OVERSIGHT, AND STIPULATED**
4 **PAYMENTS**

5 15. **Mitigation Payment.** In recognition of the good faith efforts by Tri-C to
6 comply with all aspects of the General Permit and the Clean Water Act, and in lieu of
7 payment by Tri-C of any penalties, which have been disputed but may have been
8 assessed in this action if it had been adjudicated adverse to Tri-C, the Settling Parties
9 agree that Tri-C will pay the sum of thirty-five thousand dollars (\$35,000) to the Rose
10 Foundation for Communities and the Environment (“Rose Foundation”) for the sole
11 purpose of providing grants to environmentally beneficial projects relating to water
12 quality improvements in Sacramento River and Sacramento-San Joaquin Delta.
13 Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 201
14 4th Street, Suite 102, Oakland, CA 94607, Attn: Tim Little. Payment shall be made
15 by Tri-C to the Rose Foundation within one-hundred-twenty (120) calendar days of
16 the Effective Date. Tri-C shall copy CSPA with any correspondence and a copy of
17 the check sent to the Rose Foundation. The Rose Foundation shall provide notice to
18 the Settling Parties within thirty (30) days of when the funds are disbursed by the
19 Rose Foundation, setting forth the recipient(s) and purpose(s) of the funds.

20 16. **Reimbursement of Fees and Costs.** Tri-C shall reimburse CSPA in the
21 amount of thirty-six thousand five hundred dollars (\$36,500.00) to help defray
22 CSPA’s reasonable investigation, expert, and attorneys’ fees and costs, and all other
23 reasonable costs incurred as a result of investigating the activities at the Facility
24 related to this Consent Decree, bringing these matters to Tri-C’s attention, and
25 negotiating a resolution of this action in the public interest. The payment shall be
26 made within thirty (30) days of the Effective Date. The payment shall be made via
27

1 wire transfer or check, made payable to: “Lozeau Drury LLP” and delivered by
2 overnight delivery, unless payment via wire transfer, to: Lozeau Drury LLP, c/o
3 Rebecca Davis, 1939 Harrison St, Suite 150, Oakland, CA 94612.

4 17. **Compliance Monitoring Funds.** As reimbursement for CSPA’s future
5 fees and costs that will be incurred in order for CSPA to monitor Tri-C’s compliance
6 with this Consent Decree and to effectively meet and confer and evaluate storm water
7 monitoring results for the Facility, Tri-C agrees to pay CSPA the additional sum of
8 three thousand dollars (\$3,000) per Reporting Year. Payment will be made within 30
9 days of the Effective Date in the manner prescribed for the payment required by
10 paragraph 22.

11 **IV. COMMITMENT OF CSPA**

12 18. **Submission of Consent Decree to DOJ.** Within three (3) business days
13 of receiving all of the Settling Parties’ signatures to this Consent Decree, CSPA shall
14 submit this Consent Decree to the U.S. Department of Justice (“DOJ”) and EPA for
15 agency review consistent with 40 C.F.R. §135.5. The agency review period expires
16 forty-five (45) calendar days after receipt by the DOJ, evidenced by correspondence
17 from DOJ establishing the review period. If for any reason the DOJ or the District
18 Court should decline to approve this Consent Decree in the form presented, the Parties
19 shall use their best efforts to work together to modify the Consent Decree within thirty
20 (30) days so that it is acceptable to the DOJ or the District Court. If the Parties are
21 unable to modify this Consent Decree in a mutually acceptable manner that is also
22 acceptable to the District Court, this Consent Decree shall immediately be null and
23 void as well as inadmissible as a settlement communication under Federal Rule of
24 Evidence 408 and California Evidence Code section 1152.

25 //
26
27

1 **V. WAIVER, RELEASES AND COVENANTS NOT TO SUE**

2 19. In consideration of the above, and except as otherwise provided by this
3 Consent Decree, the Parties hereby forever and fully release each other and their
4 respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and
5 current and former employees, attorneys, officers, directors and agents from any and
6 all claims and demands of any kind, nature, or description whatsoever, and from any
7 and all liabilities, damages, injuries, actions or causes of action, either at law or in
8 equity, which the Parties have against each other arising from CSPA's allegations and
9 claims as set forth, or as could have been set forth, in the 60-Day Notice Letter and
10 Complaint for any and all violations of the Permit or the Clean Water Act at the
11 Facility up to and including the Termination Date of this Consent Decree.

12 20. **No Admission.** The Parties enter into this Consent Decree for the
13 purpose of avoiding prolonged and costly litigation. Nothing in this Consent Decree
14 shall be construed as, and Tri-C expressly does not intend to imply, any admission as
15 to any fact, finding, issue of law, or violation of law, nor shall compliance with this
16 Consent Decree constitute or be construed as an admission by Tri-C of any fact,
17 finding, conclusion, issue of law, or violation of law. However, this Paragraph shall
18 not diminish or otherwise affect the obligation, responsibilities, and duties of the
19 Parties under this Consent Decree.

20 **VI. BREACH OF CONSENT DECREE AND DISPUTE RESOLUTION**
21 **PROCEDURES**

22 21. **Informal Dispute Resolution.** The Settling Parties will engage in
23 "Informal Dispute Resolution" pursuant to the terms of this paragraph:

- 24 a. If a dispute under this Agreement arises, including whether any
25 Settling Party believes that a violation of the Agreement and the
26 Court's dismissal order has occurred, the Settling Parties will meet

1 and confer (telephonically or in-person) within twenty-one (21) days
2 of receiving written notification of a request for such meeting, unless
3 the parties have already met and conferred on the dispute pursuant to
4 paragraph 17. During the meet and confer proceeding, the Settling
5 Parties will discuss the dispute and make reasonable efforts to devise
6 a mutually acceptable plan, including implementation dates, to resolve
7 the dispute. The Settling Parties may, upon mutual written
8 agreement, extend the time to conduct the meet and confer
9 discussions beyond twenty-one (21) days. If meet and confer
10 discussions fail to resolve the dispute, the Settling Parties shall
11 request a magistrate judge of this court to conduct a single mediation
12 session pursuant to such procedures as the magistrate judge may
13 require. The mediation is to be held within 45 days of the conclusion
14 of the meet and confer discussions, or as soon thereafter as the
15 schedule of the magistrate judge will permit.

- 16
17 b. If any Settling Party fails to meet and confer or mediate within the
18 timeframes set forth in paragraph (a) directly above, or the meet and
19 confer and mediation do not resolve the dispute, after at least twenty-
20 one (21) days have passed after the meet and confer or mediation
21 occurred or should have occurred, either Settling Party may initiate
22 the “Formal Dispute Resolution” procedures outlined directly below.

23 **22. Formal Dispute Resolution.** In any action or proceeding which is
24 brought by any Settling Party against any other Settling Party pertaining to, arising out
25 of, or related to the requirements of the Court’s dismissal order and this Agreement,
26 the Settling Parties will first utilize the “Informal Dispute Resolution” proceedings set
27

1 forth in the preceding paragraph and, if not successful, the Settling Parties will utilize
 2 the “Formal Dispute Resolution” procedures in this paragraph. “Formal Dispute
 3 Resolution” will be initiated by filing a Motion to Show Cause or other appropriately
 4 titled motion (“Motion”) in the United States District Court, Eastern District of
 5 California, to determine whether either party is in violation of the Agreement and the
 6 Court’s dismissal order and, if so, to require the violating party to remedy any
 7 violation identified by the District Court within a reasonable time frame. Litigation
 8 costs and fees incurred in the Formal Dispute Resolution process will be awarded in
 9 accord with the standard established by Section 505 of the Clean Water Act,
 10 33 U.S.C. § 1365.

11 **VII. MISCELLANEOUS PROVISIONS**

12 23. **Effective Date.** The Effective Date of this Consent Decree shall be upon
 13 the subsequent entry of the Consent Decree by the Court.

14 24. **Term of Consent Decree.** If no Phase 2 Treatment System is required
 15 pursuant to paragraph 12(b), this Consent Decree shall terminate on the 30th day
 16 following notice to CSPA of the fourth QSE following installation of the Phase 1
 17 Treatment System, indicating that no Phase 2 Treatment System is required
 18 (“Termination Date 1”). If a Phase 2 Treatment System is required pursuant to
 19 paragraph 12(b), but no Phase 3 Treatment System is required pursuant to paragraph
 20 12(c), this Consent Decree shall terminate on the 30th day following notice to CSPA
 21 of the fourth QSE following installation of the Phase 2 Treatment System, indicating
 22 that no Phase 3 Treatment System is required (“Termination Date 2”). If a Phase 3
 23 Treatment System is required pursuant to paragraph 12(c), this Consent Decree shall
 24 terminate on the 30th day following notice to CSPA of installation of the Phase 3
 25 Treatment System (“Termination Date 3”). This Consent Decree shall continue in
 26 effect from the Effective Date until Termination Date 1, Termination Date 2, or
 27

1 Termination Date 3 (whichever is applicable pursuant to this Consent Decree), or until
2 early termination pursuant to paragraph 25, or through the conclusion of any
3 proceeding to enforce this Consent Decree initiated prior to the applicable termination
4 date, or until the completion of any payment or affirmative duty required by this
5 Consent Decree, whichever is the later occurrence.

6 **25. Early Termination.** If Tri-C should cease industrial operations at the
7 Facility and file a Notice of Termination (“NOT”) under the Industrial Stormwater
8 Permit prior to the Termination Date(s) of this Consent Decree, Tri-C shall send
9 CSPA a copy of the proposed NOT concurrent with its submittal to the Regional
10 Water Board. Within ten (10) days of the Regional Water Board’s approval of the
11 NOT, Tri-C shall notify CSPA in writing of the approval and remit all outstanding
12 payments, including stipulated payments pursuant to paragraph 12(d), to CSPA. This
13 Consent Decree shall terminate upon notice to CSPA of the NOT and payment of all
14 outstanding payments. In the event a new successor or assign continues industrial
15 operations at the site and assumes responsibility for implementation of this Consent
16 Decree pursuant to paragraph 36, Tri-C shall notify CSPA within ten (10) days of the
17 transition.

18 **26. Execution in Counterparts.** The Consent Decree may be executed in
19 one or more counterparts which, taken together, shall be deemed to constitute one and
20 the same document.

21 **27. Facsimile Signatures.** The Parties’ signatures to this Consent Decree
22 transmitted by facsimile or electronic mail transmission shall be deemed binding.

23 **28. Construction.** The language in all parts of this Consent Decree, unless
24 otherwise stated, shall be construed according to its plain and ordinary meaning. The
25 captions and paragraph headings used in this Consent Decree are for reference only
26
27

1 and shall not affect the construction of this Consent Decree.

2 29. **Authority to Sign.** The undersigned are authorized to execute this
3 Consent Decree on behalf of their respective parties and have read, understood and
4 agreed to all of the terms and conditions of this Consent Decree.

5 30. **Integrated Consent Decree.** All Consent Decrees, covenants,
6 representations and warranties, express or implied, oral or written, of the Parties
7 concerning the subject matter of this Consent Decree are contained herein.

8 31. **Severability.** In the event that any of the provisions of this Consent
9 Decree are held by a court to be unenforceable, the validity of the enforceable
10 provisions shall not be adversely affected.

11 32. **Choice of Law.** This Consent Decree shall be governed by the laws of
12 the United States, and where applicable, the laws of the State of California.

13 33. **Full Settlement.** This Consent Decree constitutes a full and final
14 settlement of this matter. It is expressly understood and agreed that the Consent
15 Decree has been freely and voluntarily entered into by the Parties with and upon
16 advice of counsel.

17 34. **Negotiated Consent Decree.** The Parties have negotiated this Consent
18 Decree, and agree that it shall not be construed against the party preparing it, but shall
19 be construed as if the Parties jointly prepared this Consent Decree, and any
20 uncertainty and ambiguity shall not be interpreted against any one party.

21 35. **Modification of the Consent Decree.** This Consent Decree, and any
22 provisions herein, may not be changed, waived, or discharged unless by a written
23 instrument signed by the Parties.

24 36. **Assignment.** Subject only to the express restrictions contained in this
25 Consent Decree, all of the rights, duties and obligations contained in this Consent
26

Decree shall inure to the benefit of and be binding upon the Parties, and their successors and assigns. In the event that Tri-C sells all or a portion of its business to another person or entity, Tri-C shall provide CSPA with the name and contact information for the purchasing party within ten (10) days of the sale.

37. **Mailing of Documents to CSPA/Notices/Correspondence.** Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to CSPA pursuant to this Consent Decree shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic mail transmission is not feasible, via certified U.S. Mail with return receipt, or by hand delivery to the following address:

Rebecca Davis
Lozeau Drury LLP
1939 Harrison St., Suite 150
Oakland, CA 94612
E-mail: rebecca@lozeaudrury.com

Unless requested otherwise by Tri-C, any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Tri-C pursuant to this Consent Decree shall, to the extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below, or, if electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand delivery to the addresses below:

W. Lee Smith
Michel and Associates, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802

Notifications of communications shall be deemed submitted on the date that they are emailed, or postmarked and sent by first-class mail or deposited with an

1 overnight mail/delivery service. Any changes of address or addressees shall be
2 communicated in the manner described above for giving notices.

3 38. The settling Parties hereto enter into this Consent Decree, Order and
4 Final Judgment and submit it to the Court for its approval and entry as a final
5 judgment.

6 Date: August 1, 2020

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

9 _____/s/_____
10 William Jennings
11 Executive Director

12 Date: July 30, 2020

TRI C MANUFACTURING, INC.

14 _____/s/_____
15 L. Clyde Lamar, Sr.

16 Approved as to form:

18 Date: August 3, 2020

LOZEAU DRURY LLP

20 _____/s/_____
21 Rebecca L. Davis
22 Attorneys for California Sportfishing Protection
Alliance

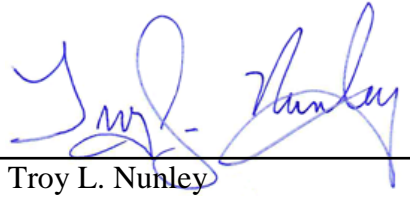
23 Date: July 30, 2020

MICHEL & ASSOCIATES, P.C.

25 _____/s/_____
26 W. Lee Smith
27 Attorney for Tri-C Manufacturing, Inc.

IT IS SO ORDERED.

Date: September 28, 2020



Troy L. Nunley
United States District Judge

